

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

February 23, 2016 at 2:00 P.M.

1.	<u>15-29500</u> -C-13 ROSALINA HARRIS Mikalah Liviakis	HEARING RE: CONFIRMATION OF PLAN 12-8-15 <u>[5]</u>
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Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 8, 2015. By the court's calculation, 75 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [16-20300](#)-C-13 IRENE SINGH
MS-1 Mark Shmorgon

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA), N.A.
1-21-16 [[8](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on January 21, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$8,968.14. The abstract of judgment was recorded with Sacramento County on September 20, 2011. That lien attached to the Debtor's residential real property commonly known as 9613 Glacier Creek Way, Elk Grove, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$339,247.00 as of the date of the petition. The unavoidable consensual liens total \$273,094.48 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$75,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank (South Dakota) N.A., Sacramento County Superior Court Case No. 34-2009-00060385, Book No. 20110920, Page 1725, recorded on September 20, 2011, with the Sacramento County Recorder, against the real property commonly known 9613 Glacier Creek Way, Elk Grove, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 20, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the First Meeting of Creditors held on January 14, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$1,873.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,873.00 is due before the hearing. Debtor has paid \$0.00 into the plan to date.
3. The Plan relies on a motion to value collateral.
4. The Plan does not account for class 1 mortgage arrears.
5. The Plan proposes payment to an unscheduled creditor. This creditor

may not have received notice of the bankruptcy filing or plan.

6. The Plan does not provide for unsecured creditors. The dividend is blank.
7. The Plan missclassifies the claim of Wells Fargo Bank as class 5 when the claim is for furniture and should therefore be placed in class 2 or class 7.
8. Debtor's disposable income totals \$373, but the proposed plan payment is \$1,873.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

4. [15-29405](#)-C-13 RHONDA SIMS
DPC-1 Ashley Amerio

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-21-16 [[24](#)]

Also #5

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 21, 2016. Twenty-eight days' notice is required. That requirement was met.

The Objection to the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to continue the Objection to March 15, 2016 at 2:00 p.m.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The Plan relies on a motion to value collateral of Moad, LLC.

At the hearing on the motion to value held on February 9, 2016, the court continued the hearing to March 15, 2016 at 2:00 p.m. The court will continue this matter to the same date.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan

is continued to to March 15, 2016 at 2:00 p.m.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 7, 2016. Twenty-eight days' notice is required. That requirement was met.

The Objection to the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to continue the Objection to March 15, 2016 at 2:00 p.m.

Creditor Moad, LLC opposes confirmation of the Plan on the basis that:

1. The Plan fails to provide for the secured claim of Moad, LLC.
2. Debtor has not filed schedules to support her ability to make the proposed plan payment.

The Plan relies on the motion to value collateral of Moad, LLC. At the hearing on the motion to value held on February 9, 2016, the court continued the hearing to March 15, 2016 at 2:00 p.m. The court will continue this matter to the same date.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Moad, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan
is continued to to March 15, 2016 at 2:00 p.m.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2016. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtors having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on January 16, 2016
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtors are \$1,873.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,873.00 is due before the hearing. Debtor has paid \$0.00 into the plan to date.
2. The Plan mistates the amount paid to the Trustee to date.
3. The Trustee is uncertain of the Debtors' ability to make the plan payments as the most recent Schedule I was filed in 2013.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan does not propose any payment from the non-exempt scheduled cause of action valued at \$50,000
2. The Trustee requests a provision in the order confirming plan stating that Debtor shall notify the Trustee within 30 days of the receipt of any settlement in this matter.

Discussion

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

9. [13-33811](#)-C-13 REDEMPTEA TUMBAGA
MET-3 Mary Ellen Terranella

MOTION FOR COMPENSATION FOR
MARY ELLEN TERRANELLA, DEBTOR'S
ATTORNEY
1-19-16 [[43](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. Forty-two days' notice is required. That requirement was met.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion for Allowance of Professional Fees is denied.

Mary Ellen Terranella, the Attorney for Debtor, ("Applicant") for Redempta Tumbaga, ("Clients"), makes an Additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November, 2015 through February, 2016. Applicant requests fees in the amount of \$2,080.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are

rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

The amount counsel had contracted with the Debtor, at the time of confirmation, was a rate of \$325.00 per hour. Applicant seeks approval of the rate agreed upon at the time counsel was retained by the Debtor. The application reflects that the Applicant has spent 11.70 hours in obtaining confirmation, and 7.90 hours post confirmation, 1.50 hours of which were anticipated, and 6.40 hours of which were unanticipated.

Applicant addressed omitted tax claim and prepared a modified plan. Counsel suggests this motion was unanticipated, as Debtor indicated she would adjust her withholding so that she would not owe additional taxes. She did, however, owe for tax year 2013, which was included in her modified plan as a post petition tax liability, with the approval of the Internal Revenue Service, which filed an amended proof of claim to include it.

Trustee's Opposition.

The Trustee contends that the billing of certain administrative matters, such as preparing and filing a change of address for the Debtor, sending a tax return and letter to the FTB, and emailing the Trustee, could have been billed at a lesser administrative rate.

Discussion

Applicant is not allowed, and the Chapter 13 Trustee is not authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,080
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The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mary Ellen Terranella is not allowed the fees in the amount of \$2,080 as a professional of the

Estate.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 5, 2016. is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor is \$500 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$250 is due before this hearing. Debtors have paid \$250 into the plan to date.

Discussion

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed

by the Debtor having been presented to the court,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is
denied and the proposed Chapter 13 Plan is not
confirmed.

12. [15-29015](#)-C-13 DMITRY BRODSKIY
DPC-1 Dale Orthner

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
1-14-16 [[17](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 14, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. It is not clear if the Debtor can make the payments under the plan because the Debtor's monthly net income is negative \$638.24.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Incur Debt is denied.

The motion seeks permission to purchase a 2009 Dodge Grand Caravan, which the total purchase price is \$12,813.63 at 9.990% APR, with monthly payments of \$266.95.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In *re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. In *re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Trustee's Opposition

The Chapter 13 Trustee objects to the motion on the basis that:

1. Debtor is \$1,51.60 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,283.43 is due before this hearing. Debtors have paid \$47,710.56 into the plan to date.

Discussion

The court is not convince the Debtor can afford to incur the debt and continue to make her plan payments. Debtor is delinquent in plan payments and has not demonstrate her ability to afford the proposed car payments.

The motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 9, 2015. By the court's calculation, 75 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on November 24, 2015. By the court's calculation, 75 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 5, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 9-1 of Creditors Bureau USA, for Quest Diagnostics is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Creditors Bureau USA, for Quest Diagnostics ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$2,174.57. Objector asserts that the Claim has not been timely filed. *See Fed. R. Bankr. P. 3002(c)*. The deadline for filing proofs of claim in this case is November 23, 2011.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Discussion

The deadline for filing a Proof of Claim in this matter was November 23, 2011. The Creditor's Proof of Claim was filed September 1, 2015.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Creditors Bureau USA, for Quest Diagnostics, Creditor filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 9-1 of Creditors Bureau USA, for Quest Diagnostics is sustained and the claim is disallowed in its entirety.

17. [16-20034](#)-C-13 PATRICIA SANCHEZ
MOH-1 Michael Hays

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK
2-9-16 [[14](#)]

Tentative Ruling: The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 9, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of JP Morgan Chase Bank, "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 2245 Palermo Road, Palermo, California. The Debtors seeks to value the property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$163,512.77. JP Morgan Chase Bank's second deed of trust secures a loan with a balance of approximately \$39,838.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Trustee's Objection

The Chapter 13 Trustee is uncertain if debtor's opinion of value is convincing. Debtor provides an opinion of what the value was, "approximately \$150,000 prior to the fire," and that it should be worth "the same: when the work is complete (whatever that might be).

Discussion

Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' Motion to Value.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank secured by a second deed of trust recorded against the real property commonly known as 2245 Palermo Road, Palermo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Also #19

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 15, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The plan relies on the motion to value the collateral of Springleaf Financial Services, Inc.

The court has granted the motion to value thereby resolving the Trustee's sole objection. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 15, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [15-29637](#)-C-13 CANDIDA FUCHS
PGM-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES,
INC.
1-20-16 [[28](#)]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 20, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The Motion to Value secured claim of Springleaf Financial Services, Inc., "Creditor," is granted.
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2012 Honda Accord. The Debtor seeks to value the property at a replacement value of \$3,275.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$6,921.78. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$3,275.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy

Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Springleaf Financial Services, Inc. secured by a purchase-money loan recorded against a 2012 Honda Accord is determined to be a secured claim in the amount of \$3,275.00, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$3,275.00.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtor having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is granted,
Debtor's Chapter 13 Plan filed on January 4,
2016 is confirmed, and counsel for the Debtor
shall prepare an appropriate order confirming
the Chapter 13 Plan, transmit the proposed
order to the Chapter 13 Trustee for approval

as to form, and if so approved, the Chapter 13
Trustee will submit the proposed order to the
court.

Thru #23

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 27, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the First Meeting of Creditors held on January 21, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor has failed to file the current form Plan.
4. The plan may fail the liquidation analysis.
5. Debtor is \$2,500.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,500.00 is due on February 25, 2016. Debtor has paid \$0.00 into the plan to date.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 28, 2016. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

HSBC Bank USA, N.A., by and through its servicing agent Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that:

1. The plan does not provide for full payment of the arrearages of Creditor's claim secured solely by Debtor's primary residence.
2. The plan is not submitted on the mandatory form.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by HSBC Bank USA, N.A., by and through its servicing agent Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 27, 2016. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.
--

Ford Motor Credit Company LLC opposes confirmation of the Plan on the basis that:

1. The plan does not provide for Creditor's claim based on a purchase money loan, incurred less than 910 days prior to the date of the filing of the petition, secured by a vehicle.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Ford Motor Credit Company LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the Februar 23, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor (*pro se*), Debtor's Attorney, Creditor, parties requesting special notice, and Office of the United States Trustee on January 4, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 3-1 of Balwinder and Jaswinder Chata DBA The Liquor Cabinet is sustained.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Balwinder and Jaswinder Chata DBA The Liquor Cabinet ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority under 11 U.S.C. § 507(a) (3) in the amount of \$1,200. Objector asserts that the claim is not entitled to priority status and should therefore be allowed as an unsecured claim. Objector points out that 11 U.S.C. § 507(a) (3) allows as priority unsecured claims under § 502(f), which provides for claims in an involuntary case. This case is not an involuntary one. Accordingly, priority status pursuant to § 507(a) (3) is inapplicable.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*,

Discussion

Based on the evidence before the court, the creditor's claim is not entitle to priority status pursuant to § 507(a)(3). Rather, the claim is allowed as an unsecured claim. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Balwinder and Jaswinder Chata DBA The Liquor Cabinet, Creditor filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 3-1 of Balwinder and Jaswinder Chata DBA The Liquor Cabinet is sustained and the claim is allowed as an unsecured claim.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 3, 2015. By the court's calculation, 75 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 3, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 9, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$1,805.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,475.00 is due on February 25, 2016. Debtor has paid \$2,670.00 into the plan to date.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

27. [15-29543](#)-C-13 KATHLEEN ABOOD
DPC-1 Gary Fraley

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
1-19-16 [[19](#)]

Also #28

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. 28 days' notice is required. That requirement was met.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The court's decision is to sustain the Objection.

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on November 9, 2015 (Case No. 15-26182). Debtor filed this Chapter 13 case on December 10, 2015.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Discharge filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed

without entry of a discharge, and Debtor shall receive no discharge
in case number 15-29543.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 9, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.
--

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$2,305.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,305.00 is due on February 25, 2016. Debtor has paid \$0.00 into the plan to date.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan
filed by the Debtors having been presented to the
court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on January 14, 2016
is confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the

proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 20, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The Plan does not provide all of Debtor's projected disposable income for the applicable commitment period.
2. The Plan payment is insufficient to fund the Plan.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 27, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtors are above the median income, and it appears the Schedules are not accurate.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

32. [11-42349](#)-C-13 SCOTT/ELIZABETH
DPC-2 NETHERCOTT
Eric Schwab

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
1-8-16 [[68](#)]

Tentative Ruling: The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Dismiss the Chapter 13 bankruptcy case of Scott and Elizabeth Nethercott ("Debtor") has been filed by the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

1. The joint debtor Scott Nethercott passed away on November 19, 2014.
2. The Debtor improperly exempted 100% of the value of post-petition settlement funds (\$193,191.00), while proposing a 0% dividend to creditors.
3. The Trustee's objection to exemption was sustained. Dkt. 61.

4. The Debtor failed to file a motion for omnibus relief under Local Rule 1016-1(b).

DEBTORS' OPPOSITION

In Opposition to the Motion, Debtor asserts the settlement funds pertain to a personal injury lawsuit related to the death of joint debtor.

Debtor's personal injury counsel has held \$13,000.00 of the net settlement funds in reserve to be turned over to the Chapter 13 Trustee to make one final distribution to creditors to pass liquidation in the Chapter 13 Plan. The actual amount necessary to pass liquidation is \$7,800.00 plus administrative expenses.

Elizabeth Nethercott has received and utilized net Settlement funds for the support of herself, her dependents and her household.

LEGAL STANDARD

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

DISCUSSION

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). The court has held that the \$193,191.00 in post-petition settlement funds was not entitled to exempt status. Dkt. 61. Nevertheless, the Debtor has refused to turnover the funds to the estate for disbursement to creditors.. Debtor's failure to turnover the property to estate by increasing monthly plan payments is cause to convert the case.

The motion is granted, and the case is converted to a case under Chapter 7.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is converted to a case under Chapter 7 of Title 11, United States Code.

33. [12-41050](#)-C-13 JANIE TAYLOR
BLG-3 Paul Bains

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR PAULDEEP BAINS,
DEBTOR'S ATTORNEY(S)
1-15-16 [[88](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 15, 2016. 28 days' notice is required. That requirement was met.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney for Debtor, ("Applicant") for Janie D. Taylor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case related to post-confirmation services.

The period for which the fees are requested is for the period July 31, 2015 through February, 2016. Applicant requests fees in the amount of \$1,620.00 and costs in the amount of \$21.32.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Case Admin: Telephone and email communications with clients and Trustee's office. Total Hours 2.7 hours (2.7 hours were no-charged and 0.0 were billed); *Motion to Confirm BLG-2:* Response to Trustees MTD, Communications with debtor and trustee's office, Preparation of Motion to Confirm and Modified Plan, Response on Opposition to MTC and attend hearing on Motion to Confirm Total Hours 5.9 hours. (.5 hours were no-charged and 5.4 were billed). *Motion for Compensation BLG-3:* Preparation of Motion for Additional Attorney Fees Total Hours 2.0 hours. (2.0 hours were no-charged and .0 were billed).

It was unanticipated when the debtor's filed her Chapter 13 that she would fall behind on her plan payments due to medical issues and would be unable to get the plan current.

After exercising reasonable billing judgment, the total number of hours expended in this case for which applicant seeks additional compensation is 10.6 and break down as follows: Attorneys 8.6 hrs; Paralegals 2.0 hrs; Administrative Staff .0 hrs. The hourly rates at the time the client retained are as follows: Attorneys \$300/hr; Paralegals \$185/hr; Administrative Staff \$85/hr.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,620.00
Costs	\$21.32

The Chapter 13 Trustee filed a statement of nonopposition on April 23, 2015.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Pauldeep Bains is allowed the fees in the amount of \$1,620.00 and costs in the amount of \$21.32 as a

professional of the Estate.

34. [14-21853](#)-C-13 GARY LAGREE
DPC-2 Peter Macaluso
1-27-16 [[61](#)]

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7

Tentative Ruling: The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.</p>
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This Motion to Dismiss the Chapter 13 bankruptcy case of Gary Lagree ("Debtor") has been filed by the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

1. The Plan exceeds 60 months.
2. After confirmation, Debtor amended his schedules to reveal \$209,397.82 in nonexempt equity. To date, Debtor has failed to propose a modified plan increasing the dividend to unsecured creditors.

DEBTORS' OPPOSITION

The non-exempt assets disclosed by the Debtor are assets held in

Slovenia - a Second World country in Southern Europe. At the Trustee's deposition, Debtor further explained that the value of these non-exempt assets at the start of this case (February 26, 2014) was near nothing. These assets appreciated in value thereafter due to Debtor's post-petition efforts such as flying to Slovenia, hiring attorneys in that country, and prosecuting civil actions on behalf of the estate.

LEGAL STANDARD

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

DISCUSSION

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). Property of the estate includes proceeds, product, offspring, rents, or profits of or from property of the estate. 11 U.S.C. § 541. The Slovenia property existed pre-petition and became property of the estate on the day that Debtor filed his bankruptcy petition. Thus, even though the Slovenia property increased in value post-confirmation, it remains entirely property of the estate. Debtor's failure to turnover the property to estate by increasing monthly plan payments is cause to convert the case.

The motion is granted, and the case is converted to a case under Chapter 7.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted,

and the case is converted to a case under Chapter 7 of Title 11, United States Code.

Thru #37

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The Plan exceeds 60 months.
2. The Plan fails to provide for the priority claim of the State Board of Equalization.
3. The Plan relies on pending motions to avoid liens.

Discussion

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the January 5, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on September 2, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Lien is granted

A judgment was entered against the Debtor in favor of The Feed Barn Country Store for the sum of \$3,391.79. The abstract of judgment was recorded with Amador County on February 5, 2013. That lien attached to the Debtor's residential real property commonly known as 13327 Taves Road, Jackson, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$220,000 as of the date of the petition. The unavoidable consensual liens total \$194,191 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$8,500 in Schedule C. The Debtor is allowed to claim the maximum amount under that provision, which is \$24,060. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is limited equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is partially avoided subject to 11 U.S.C. § 349(b)(1)(B). The judicial lien is allowed in the amount of \$1,749.

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of The Feed Barn Country Store, Amador County Superior Court Case No. 11-CR-18269, Document No. 2013-0001116-00, recorded on February 5, 2013, with the Amador County Recorder, against the real property commonly known 13327 Taves Road, Jackson, California, is partially avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed. The judicial lien is allowed in the amount of \$1,749.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on January 5, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Lien is denied.

A judgment was entered against the Debtor in favor of Michael J. Martin dba Martin Horse and Board Care for the sum of \$7,436. The abstract of judgment was recorded with Amador County on November 20, 2012. That lien attached to the Debtor's residential real property commonly known as 13327 Taves Road, Jackson, California.

The motion is not granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$220,000 as of the date of the petition. The unavoidable consensual liens total \$194,991 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$8,500 in Schedule C. The Debtor is allowed to claim the maximum amount under that provision, which is \$24,060. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), equity remains to support the judicial lien. The fixing of this judicial lien does not impair the Debtor's exemption of the real property and its fixing is not avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is denied and the judgment lien of Michael J. Martin dba Martin Horse and Board Care, Amador County Superior Court Case No. 11-CR-18269, Document No. 2012-0010480-00, recorded on November 20, 2012, with the Amador County Recorder, against the real property commonly known 13327 Taves Road, Jackson, California, is not avoided pursuant to 11 U.S.C. § 522(f)(1).

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 20, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to overrule the Objection.

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that:

1. Debtor is \$175 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$175 is due January 25, 2015. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of Bank of America.
3. Debtor does not appear able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtors' projected disposable monthly income listed on schedule J is negative \$47 and Debtors propose plan payment of \$175.

On December 4, 2015, Debtors filed the declaration of Allen Raudio, Dckt. 9, brother of Gina Fales. Mr. Raudio claims he is willing and able to support the debtors by making their monthly plan payment of \$175 per month until completion or until they are able to sustain themselves. This declaration supports that Debtors' plan payments will be made but says nothing about their household living expenses which total \$1,367 on schedule J.

Debtors are \$467 short each month based on their basic living expenses. Their budget also does not include any expense for auto insurance, only \$200 per month for food, no recreation, no medical, no utilities. Debtors have filed a bare bones unrealistic budget.

4. Debtors' plan does not provide for Travis Federal Credit Union's secured lien against vehicle which is not disclosed on their schedules but listed on schedule D. While treatment of all secured claims may not be required, failure to provide treatment may indicate that Debtor cannot afford payments called for under the plan.

DEBTORS' OPPOSITION

Debtors respond to Trustee's objection, stating in response:

1. Debtors have resolved the Trustee's concern as to delinquency by making their December and January payments. The next payment of \$175 will be due on February 25, 2016.
2. Debtors and Trustee filed a stipulation resolving the Motion to Value raised by Trustee.
3. Debtors amended the declaration of Allen Raudio, Dckt. 26, to include that Mr. Raudio is willing to not only make plan payments to the trustee but also to assist the Debtors' with their living expenses as well due to a negative disposable income on schedule J.
4. Debtors propose to resolve the matter of Travis Credit Union's claim by amending the plan in the order confirming to include Travis Credit Union in Class 4 of the plan, allowing Debtor's nephew to pay the claim outside the plan.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee responds, stating Trustee's objections have been resolved and no further opposition to the plan pending court's approval of the proposed amendment to the plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on November 30, 2015 is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, including the following clarifying language that Travis Credit Union's claim is included in Class 4 of the plan. Counsel for Debtors shall transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 21, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.
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Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the first meeting of creditors on January 14, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor's plan does not provide a commitment period. The Debtor's plan is not filed in good faith or may not comply with applicable law.
3. Debtor's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$3,775 and the Debtor is proposing a 0% dividend to unsecured creditors. Debtor's vehicle a 2004 GMC Yukon is valued at \$6,000; she exempts \$2,225 on schedule C, leaving \$3,775 nonexempt.

4. Debtor's plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying \$312.90 per month with a dividend of 0% to unsecured claims. However, Debtor's schedule J shows Debtor's monthly net income is \$797.23 per month.
5. The plan may not comply with applicable law. Debtor has failed to propose payment to any creditors.
6. Debtor may not be able to make payments under the plan or comply with the plan.
7. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
8. Debtors reports and expense for life insurance on schedule J, however on Schedule B Debtor does not report any interest in life insurance policy.

Trustee confirms that on February 11, 2016, Debtor appeared at the continued first meeting of creditors and provided all required 521 documents, and that Debtor is current under the plan. However, Trustee has not provided whether Debtor has corrected the remaining errors in the plan, including failing to provide a commitment period, whether Debtor's plan fails chapter 7 liquidation analysis, whether this plan is Debtor's best efforts, and whether Debtor has remedied failing to provide payment to creditors including secured creditors. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

40. [15-24061](#)-C-13 RANDY RICHARDSON AND MOTION TO CONFIRM PLAN
WSS-2 JACQUELYN **RAMIREZ-RICHARDSON** 12-31-15 [[66](#)]
W. Steven Shumway

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 31, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41. [15-29061](#)-C-13 CYNTHIA HARSHBARGER
DPC-1 Harry Roth

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-13-16 [[16](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2016. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

<p>The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.</p>

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed in their entirety.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 10, 2015. By the court's calculation, 75 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 10, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

43. [14-31267](#)-C-13 JASON SCHULTE
DPC-2 Mikalah Liviakis

OBJECTION TO CLAIM OF EXTER
FINANCE/ASCENSION CAPITAL
GROUP, CLAIM NUMBER 13-1
1-7-16 [[27](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2016. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 13-1 of Exeter Finance/Ascension Capital Group is sustained and the claim is disallowed in its entirety.

David Cusick, Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Exeter Finance/Ascension Capital Group ("Creditor"), Proof of Claim No. 13-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$26,000. Objector asserts that the Claim is a duplicate of Proof of Claim Number 12-1.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Based on the evidence before the court, the creditor's claim is

disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Executor Finance/Ascension Capital Group, Creditor filed in this case by David Cusick, Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 13-1 of Executor Finance/Ascension Capital Group is sustained and the claim is disallowed in its entirety, without prejudice to the rights of the creditor pursuant to Proof of Claim Number 12-1.

Thru #47

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee objects to confirmation of the plan on the following basis:

1. The plan does not pay unsecured creditors what they would receive in the event of a chapter 7, 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$37,349.65 and section 2.15 of Debtor's plan proposes to pay 0% to unsecured creditors. However Debtor's amended schedules A, B, and C indicate nonexempt equity of \$37,349.65 in real property located at 3521 Sierra College Boulevard, Loomis, California.
2. Debtor has included three additional provisions that may not comply with applicable law.

Section 6.01 appears to provide for the mortgage payments to Seterus to be direct in May 2015 only, and fluctuating plan payments over a 60 month period. The section also references a prior declaration and provides a nonbinding plan calculation.

Section 6.02 appears to provide only nonbinding explanations and calculations and does not appear to alter the terms of the plan.

Section 6.03 may provide that three unsecured claims are no longer provided for in the plan (Chase Card, Sacramento County, and Alan Frumpkin). This section may prevent the discharge of these debts, as 11 U.S.C. § 1328(a) provides for "a discharge of all debts provided for by the plan." Providing for separate classes of unsecured claims may require the Debtor to prove that the class is not unfairly discriminated against.

CREDITOR'S OPPOSITION

Creditor Allan R. Frumpkin opposes confirmation of the plan on the following basis:

1. The plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). There are errors in the plan as to unsecured claims. Section 2.15 lists total unsecured debts as \$0. However, unsecured creditors in this case have already filed claims for \$8,571.95. Claims are presumptively valid unless and until successfully objected to. Additionally, Debtor has a chapter 7 liquidation analysis of \$37,349.65 and therefore must pay 100% of nonpriority general unsecured claims or \$37,349.65 whichever is less.
2. Debtor's plan fails feasibility. Debtor does not demonstrate that he can make the required minimum plan payments. Based on claims filed, the attorney fees to be paid through the plan, the mortgage payments and arrears on the home, Creditor calculates the plan payment to be \$3,247.30 per month or taking all Debtor says to be true, \$2,4842.62 per month. Debtor demonstrates that his disposable income is only \$1,131 per month which is insufficient to pay the required monthly payment.
3. This plan is not Debtor's best efforts under 11 U.S.C. § 1325(b).

The court shares Trustee and Creditor's concerns as to Debtor's treatment of unsecured debts, the chapter 7 liquidation analysis, whether Debtor is able to make plan payments, and whether this plan is in Debtor's best efforts. The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

45. [15-22968](#)-C-13 ROBERT WAGNER
Bruce Rorty

MOTION TO ORDER THE LAW OFFICES
OF ALLAN R. FRUMKIN TO RETURN
TO THE BANKRUPTCY ESTATE ALL
MONEY RECEIVED FROM DEBTOR,
MOTION TO DISMISS THE FRUMKIN'S
PROOF OF CLAIM
1-20-16 [[125](#)]

Tentative Ruling: The Motion to Order Return of Monies and Motion to Dismiss Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 20, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Order Return of Monies and Motion to Dismiss Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Order Return of Monies and Motion to Dismiss Proof of Claim of Allan R. Frumkin is

Debtor was ordered by this court to file the instant motion at hearing on November 24, 2015.

Debtor moves this court for an order: (1) directing Claimant Law Offices of Allan R. Frumkin to return to the bankruptcy estate all monies collected from Robert Dale Wagner in 2014 in connection with the chapter 13 bankruptcy petition filed in March 2014 and the Placer County Superior Court lawsuit, *Wagner v. Seterus*, and (2) dismissing the proof of claim filed by Allan R. Frumkin and pay Debtor's attorneys fees pursuant to retainer agreement executed by Frumkin and Wagner on March 17, 2014. Debtor points to the same facts asserted in Objection to Proof of Claim, Dckt. 69.

CREDITOR'S OPPOSITION

Creditor opposes the instant motion, asserting the fees previously collected by Debtor were legitimate, and that second, the Fee Agreement required that Debtor address billing issues within 30 days, Exhibit A, Dckt. 137, which he did not do. Creditor asserts the only issue remaining is the reasonableness of fees charged and paid, and the turnover of any amounts in excess of those reasonable amounts. Creditor states that they are, as there is a statutory basis for the fees and they benefitted the estate.

CHAPTER 13 TRUSTEE'S RESPONSE

Chapter 13 Trustee points out multiple deficiencies in this motion: that no docket control number was assigned to this motion, that multiple requests were filed in a singular document contrary to local rules, that the contents of the notice provided do not comply with local rules, multiple forms of relief were requested, and that while various California Civil Codes are cited, Debtor does not cite to any authority in the Bankruptcy Code for the motion or relief requested.

DISCUSSION

The court will address the deficiencies raised by Chapter 13 Trustee at hearing February 23, 2016, and will further continue this motion to be heard concurrently with the Objection to Proof of Claim (item 46 below) and Motion to Convert Case to Chapter 7 (item 47) below at evidentiary hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Order Return of Monies and
Motion to Dismiss Proof of Claim filed by
Debtor, having been presented to the court,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion to Order
Return of Monies and Motion to Dismiss Proof
of Claim is continued to [DATE] at [TIME] . .
. .

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Not Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The hearing on the Objection to Proof of Claim Number 1 of the Law Offices of Allan R. Frumkin is set for evidentiary hearing on [DATE] at [TIME].</p>
--

Debtor, Robert Dale Wagner, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of the Law Offices of Allan R. Frumkin ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$8,571.95. Objector asserts that in March 2014, Debtor retained the law Offices of Allan R. Frumkin to combat a foreclosure on his family residence scheduled for late March 2014.. Debtor unequivocally informed the Law Office of Allan R. Frumkin that he had very limited funds of approximately \$4,000, and that there were \$9,000 in arrears on the mortgage. The Law Office of Allan R. Frumkin then pursued a legal strategy putting Debtor in further arrears and did not solve the foreclosure issue. The Frumkin Firm asserts Debtor owed \$14,517.95 in aggregate fees, \$8,571.95 of which are being pursued in the proof of claim.

The Frumkin Firm initially filed a skeletal chapter 13 case, then instituted costly litigation against Seterus, the home loan servicer. The Frumkin Firm was billing for suspended attorney Steven Lynes at \$300 per hour, although the principal Allan R. Frumkin knew that effective March 21, 2014, Mr. Lynes had been suspended by the California State Bar.

Further, in April 2014, the placer County Superior Court judge ruled that an ex parte application for a temporary restraining order halting the foreclosure sale was denied in significant part because the work was defective because the firm did not prosecute the chapter 13 case.

Debtor asserts that Proof of Claim 1 (in the amount of \$8,571.95) should be dismissed, and that the Law Offices of Allan R. Frumkin should be required to repay the bankruptcy estate all sums collected from Debtor (\$7,446) because the firm pursued a faulty legal strategy and grossly over billed Debtor.

CLAIMANT'S RESPONSE

Claimant, the Law Offices of Allan R. Frumkin, starts by pointing out that incorrect notice was provided pursuant to LBR 3007-1(b)(1), pursuant to which 44 days' notice is required. Here, instead, 36 days' notice was provided. Moreover, Claimant objects that the notice was not served at the proper address.

Finally, Claimant asserts that Debtor's objection does not comply with the requirements of the Bankruptcy Code, as Debtor has failed to state a basis under 11 U.S.C. §§ 502(a) & 502(b) for his objection to claim. Furthermore, Creditor asserts that this claim is better suited to adjudication in state court, and in fact, stay relief may here be appropriate to permit resolution in state court as to the matter of fees permissible.

TRUSTEE'S RESPONSE

Trustee states that he is not opposed to hearing on this matter, and is not opposed to the relief requested. Trustee, however, points out that the Law Offices of Allan R. Frumkin did not file a 2016(b) Disclosure of Attorney Compensation when he was Debtor's attorney in Debtor's prior bankruptcy case, Case No. 14-22753.

NOVEMBER 24, 2015 HEARING

The hearing on the Objection to Proof of Claim Number 1 of the Law Offices of Allan R. Frumkin was continued to 2:00 p.m. on February 23, 2016. The court authorized the filing of a companion motion asserting the various claims for affirmative recovery, and stated it would be set for the same date and time, at which the court will coordinate the evidentiary hearing on the Objection and Motion, if the matter was not otherwise resolved.

The court noted that Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620,

623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

At the hearing the court and parties addressed that the current Objection also contains claims for affirmative relief and recover of attorneys' fees previously paid and received by Claimant. That implicates 11 U.S.C. § 329 and L.B.R. 2016-1.

CREDITOR'S SUPPLEMENTAL BRIEF

Creditor law Offices of Allan R. Frumkin updates that court as to discovery and status of this matter. Parties met and conferred telephonically on February 11, 2016 and spoke for 1.80 hours regarding discovery and the possibility of settlement/compromise. No agreement has yet been reached.

DISCUSSION

At the hearing on November 24, 2015, the Parties stipulated on the record to determining such affirmative claims related to the objection by Contested Matter and not an adversary proceeding, if otherwise required by Federal Rule of Bankruptcy Procedure 7001. Additionally, the court makes Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable to the motion asserting the claims for affirmative recovery from Claimant. The court will set a date for evidentiary hearing and accompanying deadlines at hearing on February 23, 2016.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of the Law Offices of Allan R. Frumkin, Creditor filed in this case by the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Proof of Claim Number 1 of the Law Offices of Allan R. Frumkin ("Claimant") is set for evidentiary hearing on [DATE] at [TIME].

IT IS FURTHER ORDERED that the court makes the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable to the above motion to allow Debtor and Claimant to litigate all of the issues relating to the recovery of monies in one contested matter. The parties stipulated on the record to having such claims adjudicated in a contested matter if a contested matter is otherwise required pursuant to Federal Rule of Bankruptcy Procedure 7001.

Tentative Ruling: The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. 28 days' notice is required. This requirement was met.

The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is continued to [DATE] at [TIME].</p>
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This Motion has been filed by The Law Offices of Allan R. Frumkin ("Creditor") to convert this case from one under Chapter 13 to one under Chapter 7.

Creditor asserts that the case should be converted because Debtor, having filed this chapter 13 case on April 13, 2015, has been unsuccessful in confirming a chapter 13 plan for over 6 months. Debtor's attempts are unconfirmable because Debtor is \$40,000 in arrears on his home and cannot afford to save his home. Pursuant to Debtor's schedule F, Debtor owes \$13,750.55 to non-priority general unsecured creditors, and pursuant to Debtor's schedule B and C, Debtor has \$37,349.65 in non-exempt equity available to non-priority general unsecured creditors. Creditor here asserts that (1) there is cause to act; and (2) conversion is in the best interest of creditors.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee, David Cusick, responds to Creditor's motion stating that Debtor has a pending objection to claim to this Creditor's claim, and that Debtor is current to Trustee under the most recent second amended plan with \$13,658.02 paid to date. Debtor's most recent Motion to Confirm was withdrawn on November 2, 2015, and no subsequent motion to confirm has been filed to date.

DISCUSSION

The Chapter 13 Trustee is correct in noting that Debtor's Objection to Proof of Claim of the Law Offices of Allan R. Frumkin, Dckt. 69, is pending, heard on November 24, 2015, and continued to February 23, 2016. Noting that the very creditor to whose claim Debtor is objecting, and further noting that Debtor is current on payments to Trustee under the terms of the second amended plan, the court will continue the instant motion to the same date of evidentiary hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert filed by Creditor the Law Offices of Allan R. Frumkin having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is continued to [DATE] at [TIME].

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Chapter 13 Trustee, David Cusick, objects to the instant motion to confirm plan on the following basis:

1. Debtor did not appear at the first meeting of creditors on January 21, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtor has not provided Trustee with a business documents. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
4. The Motion to Confirm Plan may not comply with the requirements of the Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. FRCP 7(b) states the "plead with particularity" requirement.

This motion merely states that the Debtor moves for court confirmation of the plan.

5. Debtor did not file a declaration in support of the motion setting out all the requirements of 11 U.S.C. § 1325(a)(1)-(9).
6. Debtor's plan does not list any creditors to be paid through the plan in classes 1, 2, 5, or 6. The plan also fails to list any creditors as surrendered in class 3 or direct pay in class 4. Section 2.15 of the plan does not indicate the total unsecured debts and the percentage to be paid to unsecured creditors. Debtor's schedule F lists unsecured debts totaling \$299,674.
7. Debtor's schedules contain several errors or omissions.
8. Debtor has claimed exemptions under CCP § 703.140(b) and is married based on the Statement of Current Monthly Income. However, Debtor has not filed a spousal waiver signed by Debtor and Spouse.
9. Debtor may owe more debt than is allowed, and may therefore may not be entitled to chapter 13 relief under 11 U.S.C. § 109(e). Based on the Motion for Relief from the Automatic Stay filed by Wells Fargo Bank and Proof of Claim filed by Real Time Resolutions Inc., Debtor is over the allowed secured debt limit of \$1,149,525. Based on the omissions on schedule F as to the unsecured debt amounts, Debtor may also be over the unsecured debt limit of \$383,175.

CREDITOR OPPOSITION

Creditor, Wells Fargo Bank, N.A. as trustee on behalf of holders of the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12, opposes confirmation of the plan based on the following:

1. Debtor's plan does not provide for Creditor's claim.
2. Debtor's plan understates the amount of pre-petition arrears due, proposing to pay \$0.00.
3. Debtor's schedule J indicates Debtor has a disposable income of \$40. However, Debtor will be required to pay a minimum of \$16,666.67 monthly in order to cure Creditor's pre-petition arrears over the life of the plan.
4. Debtor has had a number of multiple prior bankruptcies and thus lacks good faith in the filing of this bankruptcy.
5. There was an unauthorized transfer of the property via a grant deed that has prevented Creditor from exercising state law remedies. Thus, this filing is proposed to be in bad faith and a misuse of the bankruptcy code.

Trustee and Creditor's concerns are well-taken. The court agrees that Debtor's plan does not sufficiently provide for the claims of numerous creditors and is severely lacking in documents to support the motion-including a declaration, business documents, spousal waiver, etc. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

49. [14-28271](#)-C-13 MICHAEL/MICHELE
DPC-2 NOWAKOWSKI
Michael Croddy

MOTION TO RECONSIDER DISMISSAL
OF CASE
2-1-16 [[35](#)]

DEBTOR DISMISSED:

01/21/2016

JOINT DEBTOR DISMISSED:

01/21/2016

Tentative Ruling: The Motion to Reconsider was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2016. 14 days' notice is required. That requirement was met.

The Motion to Reconsider was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Reconsider is granted.

DEBTOR'S MOTION TO RECONSIDER DISMISSAL

Michael Allan Nowakowski and Michele Ruth Nowakowski ("Debtor") seeks an Order to reconsider the Order to Dismiss the Case entered on January 21, 2016. Dckt. 30. The case was dismissed for failure to make timely plan payments. Debtors owed \$4,162 on or before January 20, 2016, which they paid on January 13, 2016. However TFS did not pay Trustee until January 21, 2016. Dckt. 56.

TRUSTEE'S OPPOSITION

On February 16, 2016, Chapter 13 Trustee David Cusick filed a motion of non-opposition, providing that Debtors filed a timely opposition, made a payment to TFS before January 13, 2016, and that the transaction payment was posted on January 21, 2016. Trustee does not oppose this motion.

DISCUSSION

The court notes that Debtors appear to have taken the appropriate steps to remedy the concerns raised by the Trustee as to delinquent plan payments. The court will grant the Motion to Reconsider and reinstate the case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Reconsideration of the Order to Dismiss filed by Wallen Yep ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Chapter 13 Trustee opposes confirmation of the plan on the basis that Debtor is \$150 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$600 is due February 25, 2015. The case was filed on December 11, 2015, and Debtor has paid \$450 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

51. [15-29574](#)-C-13 JOSE GUILLEN AND SUSANA
DE GUILLEN
Thomas Gillis

HEARING RE: CONFIRMATION OF
PLAN
12-11-15 [[5](#)]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 11, 2015. By the court's calculation, 74 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 10, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtors are proposing a modified plan that does not provide for continuous adequate protection payments to the mortgage holder. Section 6.05 of the modified plan proposes adequate protection payments of \$1,300 for 9 months out of the first 11 months with 2 months omitted due to delinquency. Adequate protection payments under the confirmed plan are \$1,300 per month and there is currently \$2,600 principal due. Failure to provide an adequate protection payment for each month alters the terms of the loan modification.
2. Trustee is uncertain how Debtor's real estate taxes and insurance are being paid.
3. Trustee is uncertain of Debtor's ability to make plan payments.

Debtor's plan payments under the confirmed plan are \$1,600 for 13 months then \$2,850 for 47 months. February 2016 is month 14. Since confirmation Trustee has filed 2 Motions to Dismiss for delinquent payments. Debtor now proposes plan payments of \$14,300 total paid in through month 11, \$1600 for 1 month, \$1400 for 4 months, \$2100 for 18 months, then \$2000 for 24 months. Debtor states that she can afford this increase because she will obtain payments for the use of her publications and royalties, and UBER income should stabilize in 5 months. Debtor has not been able to afford lesser payments in the past, and Trustee is not convinced Debtor will be able to afford the increased payments.

The court shares trustee's concern that Debtor has not provided adequate protection for the mortgage holder, that Debtor has not made clear how Debtor's real estate taxes and insurance are being paid, and most concerning, that Debtor will be able to afford monthly increased plan payments when she has twice been unable to afford payments of \$1,300 in the past. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee's calculations provide that the plan will complete in more than 60 months proposed, possibly taking up to 73 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).
2. Debtor does not appear able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$104 under the terms of the proposed modified plan.

The court shares trustee's concerns as to the proposed modified plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtors have not filed an accompanying declaration in support of the instant Motion to Modify to evidence their desire to modify the plan or ability to perform under the modified terms. Debtors have not updated the information in previously filed declarations
2. Debtors have not filed amended scheduled I and J in support of the proposed reduction in their plan payments from \$780 per month to \$600. Trustee previously raised this objection in Debtors' prior Motion to Modify, which was originally heard October 27, 2015, continued to December 8, 2015, then denied in part for Debtors' failure to file an amended schedule I.
3. Section 2.07 of Debtors' modified plan proposes a \$0.00 monthly dividend for administrative expenses which is less than the \$38 per

month in the original plan. To date, the total amount remaining to be paid is \$1,217.

The court agrees that Debtors' motion to modify is lacking, unsubstantiated by evidence (in the form of declaration of Debtors), and due to lack of amended schedules filed with the court. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2016. 14 days' notice is required. That requirement was met.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion to Incur Debt is granted.

The motion seeks permission to incur post-petition debt to obtain a reverse mortgage on real property commonly known as 107 Westwood Court, Winters, California, in which Debtor holds a 2/3 interest pursuant to inheritance. The current value of the home is \$424,000. Debtor seeks to obtain a reverse mortgage to buy out her sister's 1/3 interest in the property and pay 100% of claims filed in this case. Debtor proposes that funds are to be paid directly to Debtor's sister and the chapter 13 Trustee from escrow.

Debtor proposes to pay Debtor's sister an estimated \$141,667, and an amount to be paid to chapter 13 trustee of \$26,157.35. Debtor has made preliminary arrangements with American Pacific Mortgage to obtain a reverse mortgage (single loan) subject to approval of the court. The terms are for initial loan balance of \$187,606.35 with an interest rate of 4.015%. There are no monthly payments on the loan as it is a reverse mortgage. Exhibit A,

CHAPTER 13 TRUSTEE

Chapter 13 Trustee does not oppose this motion, however raises with the court that the estimated plan payoff \$26,157.35 may be higher than required. If Debtor's counsel is seeking additional fees, Trustee does not oppose however counsel will need to file a separate motion for fees.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Betty Ann Biasi ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 25.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on January 5, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Nissan Motor Acceptance, "Creditor," is denied.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2013 Nissan Rouge. The Debtor seeks to value the property at a fair market value of \$14,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor seeks to value the claim of Nissan Motor Acceptance who holds a purchase money security interest in the collateral in the present amount of \$25,767.41.

IMPROPER SERVICE

Debtor seeks to value the collateral of "Nissan Motor Acceptance." However, the proof of service filed by Debtor, Dckt. 21, does not purport to serve Creditor Nissan Acceptance Corps at any address.

Relief request by Debtor, who has failed to serve the Creditor whose claim this motion is attempting to affect or modify, is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by

Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is denied.

57. [15-26885](#)-C-13 STANLEY/KATHLEEN HART
SJS-1 Matthew DeCaminada

MOTION TO VALUE COLLATERAL OF
PATELCO CREDIT UNION
1-18-16 [[28](#)]

Also #58

Tentative Ruling: The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 18, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Patelco Credit Union, "Creditor," is
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The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 7248 Sylvan Grove Way, Citrus Heights, California. The Debtors seek to value the property at a fair market value of \$225,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

Debtors assert that the first deed of trust secures a loan with a balance of approximately \$225,364.00, and therefore Patelco Credit Union's second deed of trust, which secures a loan with a balance of approximately \$32,345.59, is therefore completely under-collateralized.

CREDITOR'S OBJECTION

Patelco Credit Union, Creditor, objects to this motion on two basis. First, Creditor asserts that the value of the property is at least \$256,355 as of the filing of the petition, based on an estimate from zillow.com.

Second, even if the court were to accept the Debtors' valuation, the senior deed of trust holder filed a proof of claim stating that the amount owed on the claim is \$222,831.87, leaving \$2000 in equity protecting Creditor's lien.

DISCUSSION

The court notes that Debtors filed this motion with the court on January 18, 2016. On January 19, 2016, Creditor The Bank of New York Mellon C/O Wells Fargo Bank, N.A., holder of the first deed of trust, filed a proof of claim purporting to be secured in the amount of \$222,831.87. If the court were to take the valuation of the subject property declared by Debtors as true of \$225,000, there would remain equity to secure.

The court further acknowledges Creditor's assertion that the value proffered by Debtors is too low, however Creditor only points to a zillow.com estimate, which is not evidence that the court may rely on to make this determination.

The court will render its decision upon hearing the oral arguments of the parties on February 23, 2016, and will possibly set the motion for evidentiary hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is

Tentative Ruling: The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motii haveon and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 18, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-rsrespondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Value secured claim of Sierra Central Credit Union, "Creditor," is granted.</p>

The Motion filed by Stanley Wilford Hart and Kathleen Margaret Hart ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Ford F-150 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,891 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in August 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,909.69. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,891. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Stanley Wilford Hart and Kathleen Margaret Hart ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2007 Ford F-150 ("Vehicle") is determined to be a secured claim in the amount of \$6,891, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,891 and is encumbered by liens securing claims which exceed the value of the asset.

59. [15-26986](#)-C-13 LISA SWINNEY
[15-2198](#) PGM-1
SWINNEY V. AARON'S INC.

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH AARON'S, INC.
1-14-16 [[15](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. 28 days' notice is required. This requirement was met.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Approval of Compromise is granted.

Lara Swinney, the Chapter 13 Debtor and Plaintiff in the adversary proceedings no. 15-2198, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Defendant Aaron's, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a purchase money lien held by Settlor and Settlor's attempts to allegedly continue to collect on the debt owed to them after the filing of the petition in violation of the automatic stay.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 17):

- A. Defendant-Creditor Aaron's, Inc. will pay \$2,500 to Debtor in full and complete compromise and settlement of all claims asserted in the adversary proceeding without an admission of liability.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to

the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Plaintiff-Debtor asserts that this factor favors settlement. Debtor has a violation of the automatic stay claim concerning post-petition collections actions of the company. Each party has a viable assertion of offense and defense. Each party has facts favorable to each party.

Difficulties in Collection

This factor favors settlement. Debtor being in bankruptcy diminishes the ability of Creditor to collect from Debtor absent the chapter 13 plan. Creditor will assert no post-petition violation has occurred.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs surrounding "he said she said" assertions as to hours worked, loans take, etc., resulting in large attorneys fees.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors and creditors are not hurt by settlement as any funds sought from the claim are exempt property, and the settlement of these claims ends the need for further litigation and attorney fees benefitting the estate.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Lara Swinney Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments

of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Aaron's, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 17).

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Chapter 13 Trustee, David Cusick, opposes confirmation of the plan on the following basis:

1. Debtor is \$410 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$410 is due February 25, 2015. Debtor has paid \$1,556 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. According to Trustee's calculation, the plan will complete in 65 months and not 60 months proposed.

The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the

Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to . . . the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor has proposed step plan payments increasing twice more in the remaining periods. While trustee would normally support payment increase, according to Trustee's records, the last statement income and expenses was filed on June 20, 2014. Debtor has not proven they can make plan payments.

The court docket reflect that on February 16, 2016, Debtor filed an amended schedule I and schedule J.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan
filed by the Debtors having been presented to the court, and
upon review of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is . . .

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62. [14-32388](#)-C-13 JAMES/MAE RODDY
DPC-3 Amy Spencer
DEBTOR DISMISSED:
04/01/2015
JOINT DEBTOR DISMISSED:
04/01/2015

MOTION TO DISGORGE FEES
1-15-16 [[38](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2016. 28 days' notice is required. This requirement was met.

The Motion to Disgorge Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Disgorge Fees is granted.

Chapter 13 Trustee, David Cusick, moves the court for an order disgorging attorney's fees in the instant case pursuant to 11 U.S.C. § 329. Movant asserts that the fees received exceed the reasonable value of services rendered.

Debtors' attorney, Amy Spencer, ("Counsel") received \$2,000 prior to the filing of the case. Counsel did not appear at the meeting of creditors held February 12, 2015 and did not provide the last filed tax returns to Trustee.

The case was filed December 28, 2014 and was dismissed prior to confirmation on April 1, 2015. Debtors' plan indicates there were attorney's fees of \$6,000 of which \$2,000 was received by Counsel prior to the case being filed.

Local Bankruptcy Rule 2016-1(c)(4) states that "if an attorney elects to be compensated pursuant to Subpart (c) but the case is dismissed prior to confirmation of a plan, absent a contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim

equal to fifty per cent (50%) of the total fee the debtor agreed to pay less any pre-petition retainer. The attorney shall not collect, receive, or demand additional fees from the debtor unless authorized by the Court."

Trustee in this case generated a check # 738190 for \$1,000 dated April 16, 2015. In May 14, 2015, Trustee's office contacted Debtor's counsel to urge them to update their address with the court. On July 13, 2015, a replacement check was generated and set to the updated address.

Trustee moves that the court grant an order disgorging attorney's fees in the amount of \$1,000 in this case and an order allowing Trutee to disburse these funds as a refund to Debtor. The motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Disgorge Fees filed by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Disgorge Fees is granted and Attorney Amy L. Spencer is ordered to return \$1,000 in fees to Chapter 13 Trustee, David Cusick. Chapter 13 Trustee is authorized to disburse these funds as a refund to Debtors.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2016. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to . . . the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtors' plan will take 69 months to complete. The proposed plan pays 28% to unsecured creditors. Unsecured claims filed total \$217,397.62. The Trustee has disbursed \$18,640.41 to unsecured creditors. \$42,230.92 remains to be paid unsecured creditors. Secured creditors are due a total of \$84.07 plus interest. Approximately \$42,314.99 remains to be paid through the plan. The proposed plan payment of \$1,401 is \$1,329.54 net of Trustee fees. 32 months remain in the plan. Debtors have completed 37 months through January 2016.
2. Debtors' proposed plan and declaration are not consistent. The Debtors' motion states 15% is to be paid unsecured creditors while the plan and declaration state 28%. Debtors' declaration states the

monthly plan payment will be \$2,130 while the plan and motion states \$1,401.

3. Debtors' declaration states in item 20 that Debtors will turn over all future bonuses received. This is not included in the proposed plan which has no additional provisions, although this indicates additional provisions are appended to the plan.

DEBTORS' RESPONSE

Debtors respond to Trustee's opposition, providing:

1. Debtors' plan is feasible. As reflected by Trustee, the unsecured claims require \$42,230.92 while the secured requires \$84.07 for a total needed of \$42,314.99 with a net Trustee fees of \$1,329.54 for 22 more months, leaving a balance of \$1,655.91 plus Trustee fees remaining to be paid from Debtors' future bonuses.
2. Debtors' plan has paid out 28% and will remain at 28%. Debtors originally attempted to make a budget at \$2,130 including the bonus checks within the monthly income. However given the irregularity, Debtors will turn over all bonus checks, which are needed to total \$1,655.91 to be feasible in this plan.
3. Debtors agree to turn over all bonuses, and the appropriate language can be included in the order modifying plan.

The court will render its decision upon hearing the arguments of Debtors and Trustee at hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is . . .

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Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b) (1) (A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 12-1 of Wisconsin Department of Revenue is sustained and the claim is disallowed in its entirety.

David Cusick, Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Wisconsin Department of Revenue ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$32,106.59. Objector asserts that the Claim has not been timely filed. *See Fed. R. Bankr. P. 3002(c)*. The deadline for filing proofs of claim for governmental units in this case is August 4, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 24.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was August 4, 2015. The Creditor's Proof of Claim was filed October 19, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Wisconsin Department of Revenue, Creditor filed in this case by David Cusick, Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 12-1 of Wisconsin Department of Revenue is sustained and the claim is disallowed in its entirety.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The additional provisions of Debtor's modified plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). The provisions call for the secured claim of Placer County Tax Collector to be paid with no payments to other secured claims until July 25, 2016. The additional provisions propose disbursements be suspended to all other creditors, including class 1 mortgage and arrears payments through month 35, and that Debtor's \$6,350 monthly plan payment be divided between Trustee fees, Placer County, who will receive a dividend of not less than \$5,267.61 and administrative expenses. Any remaining funds are to be paid to Placer County as well. Under both the confirmed and modified plan, California Bank and Trust, holding a second deed of trust on Debtor's residence, is provided for as a Class 1 claim with a monthly dividend of \$300. Wells Fargo holding a first deed of trust on

Debtor's residence is provided for in Class 2 with a monthly dividend of \$2,727.28 under the confirmed plan and \$2,526.75 beginning month 36 in the proposed modified plan. Debtor has no equity in the residence according to the schedule A, and the modified plan does not provide for any kind of adequate protection payment to these creditors. Where Debtor intends to suspend disbursements, the additional provisions may not provide adequate notice to creditors.

2. Debtor's modified plan proposes to add Franchise Tax Board as a Class 5 priority creditor when the creditor filed a secured claim for \$6,650.35 due to unfiled tax returns for tax years 2005 and 2006. Even if the claim is priority due to the unfiled returns, the creditors is entitled to interest where claimed security.

DEBTOR'S RESPONSE

On December 4, 2015, Debtor responded to Trustee's opposition. In her response, Debtor provides:

1. The additional provisions of the proposed modified plan still allow for the same total amount expected per creditor. The additional provisions change when the creditor will receive payment, not if the creditor will receive payment. The Debtor is proposing to distribute \$5,267.60 of the \$6,300 per month payment to Placer County Property Taxes and remainder will continue to pay trustees fees. Once Placer County Property Taxes and its mandated 18% interest have been paid in full then all creditors can receive expedited payment in full.
2. 100% of Debtor's general unsecured debt will be paid in full at an expedited rate. However, Creditors will stop receiving payment until Placer County property taxes, they will still receive payment in full and at a faster rate than stated in the previously confirmed plan.
3. Debtor apologizes for the oversight, and is providing fo the Franchise Tax Board claim in full.

DECEMBER 8, 2015 HEARING

At hearing on December 8, 2015, the court continued the hearing to 2:00 p..m. on January 26, 2016. The court ordered Debtor to file supplemental pleadings on or before December 28, 2015, and replies, if any, January 11, 2016.

DEBTOR'S SUPPLEMENTAL BRIEF

On December 23, 2015, Debtor filed a supplemental brief. Debtor provides the following language for the additional provisions:

1. Month 27 through Month 35 the proceeds of the monthly payment, approximately \$5267.61, shall go to the Placer County Property Taxes.
2. It is an expedited rate since the original confirmed plan payment accounted. \$2,722.93 of the plan payment went towards property taxes and court-ordered 18% interest rate. All \$6,350.00 of the plan payment will go towards paying all creditors the same amount anticipated at a higher monthly dividend starting month 36.

3. Cal Bank and Trust shall receive \$400.00 per month starting in month 36.
4. Wells Fargo shall receive \$4000.00 per month starting in month 36.
5. Diamond Well Drilling shall receive \$150.00 per month starting in month 36.
6. The State Franchise Tax Board shall receive \$200.00 per month starting in month 36 as a Class 2 claim with 3% interest.
7. All remaining funds after distribution shall be distributed to remaining claims (including unsecured claims) in a pro rata manner.

TRUSTEE'S SUPPLEMENTAL OPPOSITION

Chapter 13 Trustee responds, supplementing his basis for opposition and providing that:

1. Debtor is \$6,350 delinquent in plan payments to the Trustee to date. According to the terms of the modified plan, \$190,500 has become due. Debtor has paid a total of \$184,150 to Trustee with the last payment posted on December 4, 2015 in the amount of \$6,350. Trustee notes that Debtor submits his payments to Trustee through TFS. A review of the TFS website reflects a payment for \$6,350 dated December 30, 2015 is processing but has not cleared the TFS system and at this point the funds are not guaranteed to arrive at Trustee's office, though Trustee expects funds to clear within 5 business days.
2. The additional provision of the proposed modified plan call for the secured claim of Placer County Tax Collector to be paid with no payments to other secured claims until July 25, 2016.

The additional provisions propose disbursement be suspended to all other creditors including Class 1 mortgage and arrears payments through month 35 (May 2016, although Debtor indicates month 35 is June 2016) and that Debtor's \$6,240 monthly plan payments be divided between Trustee fees, Placer County, who will receive a dividend of not less than \$5,267.61, and administrative expenses, with any remaining funds to be paid to Placer County.

Debtor's supplemental response proposes payments of approximately \$5,267.61 to be paid to Placer County Tax Collector in months 27 through 35, nine months total, with payments to other creditors beginning in month 36.

Because a plan has been confirmed, Trustee is disbursing according to the confirmed plan. If the modified plan is approved, Trustee calculates payments to Placer County will not commence until February 2016, and will take approximately 7 months to pay in full which is beyond the 35th month as proposed.

Trustee requests Debtor clarify if ~~payments to other creditors~~ ^{payments to Placer County} is payments to other creditors commencing month 36 or if Trustee is to commence payments upon confirmation of the modified plan solely to Placer County for 9 months, although Trustee calculates the claim will be paid in full in approximately 7 month.

Trustee notes that the plan suspends payments on the ongoing mortgage which may be contrary to 11 U.S.C. § 1322(b)(2), although payments will resume with higher monthly dividends and the plan remains feasible and will complete timely.

JANUARY 26, 2016 HEARING

At hearing on January 26, 2016, the court further continued this motion in order to permit further supplemental briefings in order to respond to the oral objections raised at hearing by Creditor California Bank and Trust.

DEBTOR'S SUPPLEMENTAL BRIEFING

On February 18, 2016, Debtor submitted a supplemental brief to address various objections raised orally at hearing.

Creditor California Bank and Trust raised a number of concerns including the concern that their note will mature before the end of the plan. Debtor objects based on the untimeliness of Creditor's objections, and state that Debtor placed four calls to Creditor's counsel none of which were returned. Further, Debtor provides that a review of the docket and claim history provides that Creditor has not filed its own proof of claim and did not file any written opposition as required by the motion to confirm.

Given the lack of response to Debtor's efforts to resolve the matter, Debtor requests that the court order Creditor be bound by the terms of the plan until completion, discharge, and/or dismissal.

DISCUSSION

The court will resolve this matter upon hearing the oral arguments of the parties at hearing on February 23, 2016.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on November 19, 2015.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the
Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the

Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

67. [15-28396](#)-C-13 STANLEY BACON
MET-I Pro Se
DEBTOR DISMISSED: 11/09/2015

MOTION TO EXPUNGE
1-21-16 [[17](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors and Office of the United States Trustee on January 21, 2016. Twenty-eight days' notice is required. This requirement was met.

The Motion to Expunge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Expunge is granted.

This Chapter 13 Bankruptcy case was filed on October 29, 2015, the purported Debtor was Stanley Bacon. The petition named only Stanley Bacon, and did not list any co-debtors, and provided the last 4 digits of Mr. Bacon's social security number. An Application to Pay Filing Fee in Installments was filed concurrently with the petition. A Notice of Incomplete Filing was issued by the Clerk's Office on October 29, 2015. No further documents were filed after the Notice of Incomplete filing was issued, and the case was dismissed by the Clerk's Office for failure to timely file documents on November 9, 2015.

MOTION

Debtor Stanley Bacon filed the present Motion to Expunge. Essentially, the motion asserts that the bankruptcy was fraudulently filed by someone other than the purported Debtor without Mr. Bacon's authorization or knowledge. Included with the motion are the Declaration of Stanley Bacon.

Mr. Bacon's Declaration states that he did not file the bankruptcy case which was filed in his name, and that he did not authorize any other person to do so. Mr. McMahon's Declaration also provides that on September 6, 2005, Mr. Bacon and wife filed bankruptcy case number 05-31001-A-7 in the Eastern District of California and received a discharge on December 20, 2005. At the time of filing that case, Mr. Bacon and Wife lived at 8900 Boulder Glen Way, Sacramento, California. Since that time, Mr. Bacon and wife moved to North Carolina and unable to afford payments on the Boulder

Glen home, the property was scheduled to be auctioned at foreclosure sale on November 2, 2015. On November 2, 2015, Mr. Bacon was informed by one of his credit card companies that his card had been cancelled due to a bankruptcy filing. Mr. Bacon avers he did not file this bankruptcy case. Mr. Bacon learned from speaking with former neighbors in Sacramento that the Boulder Glen property had been rented out in recent month by a third party. The "For Rent" sign lists the same telephone number listed on the fraudulently filed bankruptcy case.

Chapter 13 Trustee has filed a statement of non-opposition.

DISCUSSION

A fraudulent bankruptcy filing can cause immense harm to the victim of the fraudulent filing. See e.g. Peter C. Alexander, *Identity Theft and Bankruptcy Expungement*, 77 Am. Bankr. L.J. 409, 410, 421 (Fall 2003). The most apparent harm to the victim of the fraudulent filing is that the case information is made available to credit reporting agencies, and the credit rating of the victim will be negatively impacted.

Very few cases deal with the issue of how to remedy a fraudulent bankruptcy filing in order to aid the victim in repairing their credit rating, and other financial affairs. See *In re Dick*, 2006 WL 6544157 (Bankr. N.D. Tex. May 19, 2006); *In re Joyce*, 399 B.R. 382 (Bankr. D. Del. 2009); *In re Stora*, 364 B.R. 194 (Bankr. D.S.C. 2006); *In re Buppelmann*, 269 B.R. 341 (Bankr. M.D. Pa. 2001). *In re Buppelmann* discussed the possible remedies the court can fashion:

"First, I could grant the request for expungement and have all documents filed related to this matter destroyed. Second, I could make a notation in this filing that the petition was fraudulent which would allow any entity that was interested in the course of the bankruptcy to conclude that the matter was, in fact, fraudulent and the filing occurred other than at the request of the Debtor. Third, I could order the Clerk to delete all references to the Debtors' names on the case dockets." *In re Buppelmann* at 343.

Movant does not request the court to either expunge the case or order the Clerk to delete all references to the Debtors' names on the case dockets. As the court in *In re Buppelmann* discussed, expungement and deletion of the purported Debtor's name may not be the best solutions to help a victim repair their credit rating after creditors and/or credit reporting agencies have become aware of the filing. *Id.* As the court in *In re Buppelmann* concluded, this court likewise concludes that the best remedy to aid a victim of a fraudulent bankruptcy filing in repairing their credit is to make a finding of fact that the case was fraudulently filed, and to enter this finding on the record.

The court finds that the testimony of Mr. Bacon by way of declaration to be credible. Accordingly, the court finds that the bankruptcy case was filed by a person other than Mr. Bacon without Mr. Bacon's knowledge or authorization, and that the signatures on the petition and filing fee installment application filed in this case are not those of Mr. Bacon. As such, the petition filed in this case is null and void.

The court will issue an order finding that the bankruptcy petition

filed in this case is null and void, and ordering that within thirty (30) days of the purported Debtor, Stanley Bacon, disputing the reporting of this bankruptcy on his credit report, the credit reporting agency shall either: delete any and all references to the filing of this bankruptcy petition from the purported Debtor's credit report, or seek relief from this court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Expunge filed by the United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 petition filed in this case is null and void, the court having determined that it was not filed by Stanley Bacon.

IT IS FURTHER ORDERED that the information concerning this bankruptcy case shall not be listed as information on any consumer report, 15 U.S.C. § 1681a(d), or consumer credit report, Cal. Civ. Code § 1785.3(c), or related to Stanley Bacon on any such report except as permitted by the this court pursuant to further order. Within 30 days after receiving a copy of this order, any consumer reporting agency, 15 U.S.C. § 1681a(f), or consumer credit reporting agency, Cal. Civ. Code § 1785.3(d), shall cease disclosing or including information about this bankruptcy case on consumer report or consumer credit report, for Stanley Bacon, or file a motion for an order authoring such disclose.

This court retains jurisdiction for all purposes relating to this order, including, without limitation the enforcement of this order and violations thereof, and granting relief from this order.

No other or additional relief is granted.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on January 19, 2016 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on January 12, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 27, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to overrule the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of PYOD, LLC, serviced by Shellpoint Mortgage Services. The motion is set for hearing on the same date as this instant objection.

The court has granted Debtor's Motion to Value the Collateral of PYOD, LLC, serviced by Shellpoint Mortgage Services, resolving Chapter 13 Trustee's only basis for objection. The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 14, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

71. [15-29598](#)-C-13 ERNEST/BETTY JACKSON
EWV-86 Eric Vandermey

MOTION TO VALUE COLLATERAL OF
PYOD, LLC
1-20-16 [[18](#)]

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 20, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of PYOD, LLC, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1418 Prospect Way, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$269,368 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$361,161. PYOD, LLC, serviced by Shellpoint Mortgage Services's second deed of trust secures a loan with a balance of approximately \$15,006. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the
Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of PYOD, LLC, serviced by Shellpoint Mortgage Services secured by a second deed of trust recorded against the real property commonly known as 1418 Prospect Way, Suisun City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$269,368 and is encumbered by senior liens securing claims which exceed the value of the Property.
